IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: **ZAKHAROFF**	)	Examiner: **R. Keehn**
Serial No. **10/786,450**	)	
Confirmation No. **4905**	)	Art Unit: **2152**
Filing Date: **FEBRUARY 25, 2004**	)	Attorney Docket No. **80235**
For: **COMMUNICATIONS SYSTEM USING HIERARCHICAL QUEUE STRUCTURE FOR EMAIL MESSAGE DELIVERY AND RELATED METHODS**	)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the final Official Action of November 9, 2009, and in connection with the Notice of Appeal filed concurrently herewith, please consider the remarks set out below.

Remarks

The Examiner is thanked for the thorough examination of the present application. The Examiner is also thanked for the telephonic interview of December 3, 2009 during which the current claim rejections were discussed.

I. The Claims Are Patentable

The Examiner rejected independent Claims 1, 10, 17, and 24 over a three-way combination of Shaw et al., D'Souza et al., and Hamilton et al. Shaw et al. is directed to an enterprise email management system for handling large volumes of email, responding through enterprise email system users or automated processes.

The Examiner correctly recognized that Shaw et al. fails to disclose storing the email messages generated by the communications device in a first queue, and attempting to send the stored email messages to the at least one destination server at a first attempt rate. The Examiner further correctly recognized that Shaw et al. fails to disclose attempting to send email messages stored in the second queue to the at least one destination server at a second rate less than the first sending rate. The Examiner then turned to D'Souza et al. for some of these critical deficiencies.

D'Souza et al. is directed to a system and method of mitigating attacks, such as denial of service attacks in a communications network. More particularly, D'Souza et al. discloses monitoring source addresses of packets in a network and comparing the source addresses to known legitimate addresses. If a source address is known as being legitimate, the packets are placed in a high priority queue for transmission at the highest rate. Packets with unknown addresses are placed in a lower priority queue and the packet serviced at a lower rate.

The Examiner further correctly recognized that even a selective combination of Shaw et al. and D'Souza et al. fails to disclose that moving email messages stored in the first queue to a second queue is based upon receipt of a delivery failure message, and moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue. The Examiner turned to Hamilton et al. in an attempt to supply these critical deficiencies.

Hamilton et al. is directed to a system for monitoring information delivered through an electronic delivery system. The system creates log files for storing selected data related to selected electronic document preparation events, forwards the log files to a central database for storage, and provides access to the log files for retrieval and analysis.

The Examiner contended that Claims 1 and 6 of Hamilton et al. disclose the above-noted critical deficiencies. Claims 1 and 6 of Hamilton et al. are reproduced below for reference:

> 1. In a document delivery system which includes a document system for producing document data and document print requests,

> a print management system for determining whether a requested document is designated for electronic delivery or non-electronic delivery based on a stored document delivery designation, and a failed email management system which is configured to receive a notice of a failed email delivery and to change a document delivery designation for at least the intended recipient of the failed email, a method of monitoring the electronic delivery of documents, said method comprising the steps of: creating log files for storing selected data related to selected electronic document preparation and delivery events; forwarding said log files to a parsing engine; parsing said log files to retrieve selected data; and storing the retrieved selected data for retrieval and analysis. (Emphasis Added).
>
> 6. The method of claim 5, wherein the data stored includes at least: the identification of failed email notifications received, the names of failed email recipients, the addresses of each failed email recipient or the dates and times of each failed email delivery.

Applicant submits that the Examiner mischaracterized Hamilton et al., as it fails to disclose that moving email messages stored in the first queue to a second queue is based upon receipt of a delivery failure message. Instead, Hamilton et al. discloses changing the document delivery option stored in the consent database so that the intended recipient of the failed email receives only non-electronic documents based upon receipt of a failed email notice. (See Hamilton et al., Paragraph 0023 and Claim 1). In other words, the document is sent as an attachment to an email, and if an email delivery failure is received, then changing the document delivery method to a non-electronic delivery method in the database. (See Hamilton et al., Paragraphs 0021-0023). Nowhere does Hamilton et al. disclose moving the email message based upon the email delivery failure using a delivery server as in the claimed invention. Accordingly, independent Claims 1, 10, 17, and 24 are patentable over the prior art for at least this reason alone.

The Examiner contended that Hamilton et al. is cited for disclosing moving email based upon an email delivery failure. More particularly, the Examiner contended that Hamilton et al. discloses determining whether a document is to be designated for a first or second delivery

method based on receipt of email delivery success or receipt of email delivery failure and cited to Hamilton et al. Claims 1 and 6, reproduced above. As noted above, Hamilton et al. fails to disclose moving of an email, but merely discloses changing a document delivery method in a database. The Examiner's characterization of Hamilton et al. is in error. Hamilton et al. fails to disclose moving email based upon an email delivery failure. Moreover, the system of Hamilton et al. completes after the documents are delivered electronically.

Still further, Applicant submits that Hamilton et al. fails to disclose moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue. Nowhere in Hamilton et al. does it teach or suggest moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue, or even moving email messages having a common characteristic with a successfully delivered email message at all. Indeed, the system and method disclosed in Hamilton et al. is completed after the documents are delivered electronically. (See Hamilton et al., Figure 2, and Paragraphs 0021, for example). Accordingly, independent Claims 1, 10, 17, and 24 are patentable over the prior art also for this reason.

Indeed, it appears the Examiner is disregarding the document delivery method changing teachings of Hamilton et al. in favor of an unreasonable reading that Hamilton et al. discloses "something" based upon receipt of an email delivery failure. Applicant submits Hamilton et al. fails to disclose that moving email messages is based upon receipt of a delivery failure message, and moving email messages having a common characteristic with a successfully delivered email message.

Applicant further submits that the Examiner's attempted combination of references is improper. More particularly, a person having ordinary skill in the art would not turn to Hamilton et al. to supply the critical deficiencies of Shaw et al, and D'Souza et al., and even turn to D'Souza et al. to combine with Shaw et al. Hamilton et al. is directed to a document delivery system. More particularly, Hamilton et al. attempts to send documents electronically as an email attachment, and if an electronic delivery fails, a database is changed to indicate non-

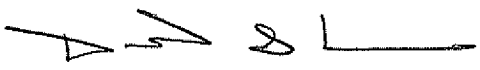
electronic sending for that customer. In stark contrast, D'Souza et al. is directed to a queuing method for mitigation of packet spoofing. More particularly, D'Souza et al. attempts to mitigate attacks such as Denial of Service attacks by examining all incoming packets. In stark contrast from both D'Souza et al. and Hamilton et al., Shaw et al. is directed to an enterprise email management system for handling large volumes of email. Indeed, the Examiner is using impermissible hindsight reconstruction based on motivation provided by Applicant's own specification in an attempt to produce the claimed invention by selectively assembling disjoint pieces of the prior art. Accordingly, the Examiner's combination of references is improper.

Accordingly, it is submitted that independent Claims 1, 10, 17, and 24 are patentable over the prior art. Their respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

II. CONCLUSION

In view of the arguments provided herein, it is submitted that all the claims are patentable. Accordingly, a Notice of Allowance is requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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